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Recent Developments: Smallwood v. State: Rape Defendant's Knowledge That He Is HIV-Positive Is Insufficient to Prove Intent to Kill

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Smallwood v. State

In *Smallwood v. State*, 343 Md. 97, 680 A.2d 512 (1996), the Court of Appeals of Maryland held that a court cannot infer a defendant's intent to kill based solely on evidence that the defendant engaged in unprotected sex after being diagnosed as infected with the Human Immunodeficiency Virus. The court found that other independent evidence must be offered to prove the defendant's requisite intent.

Dwight Smallwood was diagnosed as being infected with the Human Immunodeficiency Virus ("HIV") on August 29, 1991, while he was an inmate at the Prince George's County Detention Center. A county social worker counseled Smallwood about the inherent dangers of engaging in unprotected sex, including the risk of transmitting the virus to his sexual partners. Nevertheless, between September 26 and September 30, 1993, Smallwood and an accomplice robbed and raped three different women on three separate occasions.

In addition to robbery and rape charges, Smallwood was also charged with attempted second degree murder for each of the three attacks. Smallwood pled guilty to the robbery and the attempted rape charges in the Circuit Court for Prince George's County. He was further convicted by the trial judge on the three counts of attempted second degree murder. Smallwood thereafter appealed his convictions

Rape Defendant's Knowledge That He Is HIV-Positive Is Insufficient To Prove Intent To Kill

By Charles Kulfahl

to the Court of Special Appeals of Maryland. The intermediate court agreed with the trial judge and concluded that Smallwood had intended to kill his victims by forcing them to engage in unprotected sex with him. Smallwood appealed this ruling and the Court of Appeals of Maryland granted certiorari. The question before the appellate court was whether the trial court erred in concluding that Smallwood intended to kill his victims based solely on his knowledge that he was HIV-positive.

The court of appeals began its analysis with a brief review of its past decisions in HIV related cases. Turning to the case before it, the court restated the definition of specific intent to murder as "the specific intent to kill under circumstances that would not legally justify or excuse the killing or mitigate it to manslaughter." *Smallwood*, 343 Md. at 103, 680 A.2d at 515 (quoting *State v. Earp*, 319 Md. 156, 167, 571 A.2d 1227 (1990)). The court added that this intent may be demonstrated through circumstantial evidence and may be inferred from actions such as pointing a deadly weapon

at a vital part of the body. *Id.* at 105, 680 A.2d at 515.

In *Smallwood*, the State relied on *State v. Raines*, 326 Md. 585, 606 A.2d 265 (1992), and argued that forcing a person to have unprotected sex with an HIV-positive individual has the same legal effect as pointing a gun at a vital part of the body. In *Raines*, the defendant was convicted of first degree murder for firing a gun at the driver's side window of a truck while driving down the road. *Smallwood*, 343 Md. at 105, 680 A.2d at 515. In *Raines*, the court reasoned that the defendant's act of firing a gun at the window, knowing that the driver's head was on the other side, permitted an inference that Raines intended to kill the driver. *Id.* The State unsuccessfully argued that a similar inference could be made in *Smallwood*. In so arguing, the State contended that: (1) Smallwood knew he was HIV-positive; (2) Smallwood knew that engaging in unprotected sex increased the chance of infecting his victims; and (3) HIV infections ultimately lead to death. *Id.* at 105, 680 A.2d at 516. Therefore, Smallwood had intended to kill his victims by forcing them to engage in unprotected sex. *Id.*

The court rejected the State's argument, however, stating that the inference drawn in *Raines* rested upon the rule that "one intends the natural and probable consequences of his act." *Id.* (quoting *Ford v. State*, 330 Md. 682, 704, 625 A.2d

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984 (1993)(quoting *Davis v. State*, 204 Md. 44, 51, 102 A.2d 816 (1954))). Thus, in order to infer that Smallwood intended to kill his victims, the court must first be satisfied that the victims' deaths would have been the natural and probable result of the activity. *Id.* at 106, 680 A.2d at 516.

The court conceded that death is one possible result of engaging in unprotected sex with an HIV-positive individual. *Id.* The court was not convinced, however, that a single exposure to HIV had the natural and probable consequence of death. *Id.* Furthermore, such evidence could not provide the sole basis upon which to conclude that the person infected intended to kill the exposed individual. *Id.* Thus, the court rejected the analogy that the probable result of having unprotected sex with an HIV-positive person is similar to the

probable result of firing a deadly weapon at a vital part of someone's body. *Id.*

The court then discussed other HIV infection cases and distinguished them from *Smallwood* because of the existence of additional evidence demonstrating the defendant's intent. *Id.* at 107-08, 680 A.2d at 517. See, e.g., *State v. Hinkhouse*, 912 P.2d 921 (Or. App. 1996)(defendant concealed his infection and stated that "he would spread the virus to other people"); *State v. Caine*, 652 So.2d 1358 (La. 1995)(defendant stabbed victim with syringe while screaming "I'll give you AIDS"); *State v. Haines*, 545 N.E.2d 834 (Ind. App. 1989)(defendant slashed wrists and sprayed blood on police officer and two paramedics and told them he was going to give them AIDS). Finally, the court concluded that without additional evidence, it

could not be inferred that Smallwood intended to kill his victims. *Id.* at 107, 680 A.2d at 516.

In *Smallwood v. State*, the Court of Appeals of Maryland held that a defendant's knowledge of his HIV-positive status is not enough, in and of itself, to infer intent to kill when he engages in unprotected sex. The court emphasized that the state must meet its burden of proof for each and every element of the crime. While the court's ruling continues the trend of decisions protecting defendants' rights, the court may be underestimating the lethal effect of exposure to HIV. In a blow to prosecutors and victims alike, the court indicates that without more evidence of intent, it will not infer that a HIV-positive defendant intended to kill his victim through exposure to HIV.

